

# San Francisco Bay Conservation and Development Commission

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**TO:** Commissioners and Alternates

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**SUBJECT: Staff Recommendation on BCDC Permit Application No. 2014.006.00**  
**(Tesoro Refining & Marketing Company LLC)**  
**Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS")**  
**Compliance Project at the Golden Eagle Refinery Avon Wharf, in the City of**  
**Martinez, Contra Costa County**  
(For Commission consideration on July 16, 2015)

## Recommendation Summary

The staff recommends approval of BCDC Permit Application No. 2014.006.00, to Tesoro Refining & Marketing Company LLC ("Tesoro"), for the implementation of a Marine Oil Terminal Engineering and Maintenance Standards ("MOTEMS") compliance project at the Golden Eagle Refinery Avon Wharf, which, as conditioned, will result in:

1. The demolition of a timber berth (Berth 5) and a timber approachway;
2. The construction of a steel pile-supported approachway, a pipeway trestle to support existing pipelines, and a new berth (Berth 1A);
3. An approximate 11,939-square-foot (0.28-acre) net increase in open water surface area and an approximate 237 cubic yards (cy) increase in Bay volume; and
4. Mitigation for impacts to the federally-endangered salt marsh harvest mouse and Ridgway rail by funding the restoration of tidal marsh: the Cordelia Slough Preserve (a proposed mitigation bank not yet approved by the Commission), in an unincorporated area of Solano County; the McNabney Marsh, in the City of Martinez, Contra Costa County (outside the Commission's jurisdiction); and an unidentified area within the San Pablo Bay National Wildlife Refuge.

## Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

### I. Authorization

- A. **Authorized Project.** Subject to the conditions stated below, Tesoro Refining & Marketing Company LLC is hereby granted permission to implement the following activities within a *San Francisco Bay Plan*-designated Water-Related Industry site, in the Bay and within the 100-foot shoreline band, at the Golden Eagle Refinery Avon Wharf, at 150 Solano Way, in the City of Martinez, Contra Costa County:

#### **In the Bay and within a Water-Related Industry Priority Use Area:**

1. **Demolition.** Demolish existing pile-supported structures covering a total of approximately 74,510 square feet (1.71-acre) of Bay surface area and supported by 208, 18-inch-diameter pilings, 994, 15-inch-diameter pilings, and 60, 14-inch-diameter pilings (a total of approximately 889 cubic yards of solid fill), including the following: (a) an approximately 28,000-square-foot (0.64 acre) berth (Berth 5) and an adjoining 5,500-square-foot transition structure to Berth 1; (b) a 120-square-foot mooring dolphin ("T"); and (c) an approximately 40,890-square-foot (0.94 acre) section of a pile-supported approachway and pipeway trestle;
2. **Berth 1A, Approachway, and Pipeway.** Construct, use and maintain in-kind Berth 1A, an approachway, and a pipeway trestle covering a total of approximately 60,595 square feet (1.39-acre) of Bay surface area with the following primary features: (a) an approximately 14,910-square-foot (0.34 acre) pile-supported concrete platform with infrastructure, including an above-deck pipeline system, a two-story operator control building, an approximately 75-foot-tall loading hose/boom tower, utilities, a marine vapor recovery "skid" system, a mooring line tension monitoring system, fire and smoke detectors, firewater monitors, pumps, and emergency shutdown valves, and seismic instrumentation; (b) an approximately 6,090-square-foot (0.14 acre) pile-supported trestle to support existing pipelines, including an additional two-inch-diameter fire-fighting line; (c) an approximately 825-square-foot floating spill response boat dock with a pile-supported gangway; (d) two emergency egress vessel boat lifts covering a total of approximately 192 square feet; (e) an approximately one-half-mile-long, pile-supported approachway, including an approximately 4,000-square-foot vehicle parking area, and an adjoining trestle supporting pipelines covering a total of approximately 38,578 square feet (0.88 acre); and (f) associated steel pilings consisting of 12, 72-inch-diameter pilings; four, 48-inch-diameter pilings; 71, 36-inch-diameter pilings; 176, 30-inch-diameter pilings; and 135, 24-inch-diameter pilings, together displacing a total of approximately 1,125 cy of Bay volume;

3. **Berth 1.** Install, use and maintain in-kind, at Berth 1, an approximately 1,976-square-foot (0.045-acre) mooring dolphin (M4) and pile-supported gangway;
4. **Temporary Piles.** Install, use, maintain in-kind, and, ultimately, remove 27 temporary 16-inch-diameter piles displacing two cubic yards of Bay volume to facilitate construction of the approachway;
5. **Navigation Aid.** Relocate, use and maintain in-kind a navigation aid supported by three, 18-inch-diameter pilings; and
6. **Nesting Platform.** Install, use and maintain in-kind an osprey nesting perch consisting of a single approximately 30-foot-tall pole with an approximately 16-square-foot nesting platform in a marsh area.

**Within the 100-foot Shoreline Band:**

1. **Approachway and Pipeway.** Install, use, and maintain in-kind, 12 pilings supporting an approximately 672-square-foot section of a concrete approachway and pipeway.
- B. **Permit Application Date.** This authority is generally pursuant to and limited by the application dated April 29, 2014, including all accompanying and subsequent correspondence and exhibits, and subject to the modifications required by conditions herein.
- C. **Deadlines for Project Commencement and Completion.** Activities authorized herein must commence prior to December 1, 2015, and must be diligently pursued to completion and completed by June 1, 2017, unless an extension of time is granted by amendment of the permit. All in-kind maintenance authorized herein is allowed as long as activities and uses authorized herein remain in place and as long as relevant title documents, including leases, remain valid.
- D. **Bay Fill.** The demolition and construction activities will result in an approximate 11,939-square-foot (0.28-acre) net increase in open Bay surface area, and an approximate 237 cubic yards net increase in Bay volume.
- E. **Mitigation.** The project will result in the permanent loss of an approximately 0.02-acre area of tidal/brackish marsh suitable for the federally-listed salt marsh harvest mouse ("SMHM"), and temporarily impact an approximately 1.5-acre area of tidal/brackish marsh suitable for SMHM. Additionally, annual vegetation clearance to facilitate pipeway inspections will regularly impact an approximately 3.3-acre tidal/brackish marsh area suitable for SMHM and the federally-listed Ridgway rail. To mitigate impacts to SMHM habitat, Tesoro has provided funding to purchase 12.56 acres of SMHM habitat at the Cordelia Slough Preserve, located at the former Green Lodge Duck Club, in an unincorporated area of Solano County, approximately 7.2 miles north of the Tesoro marine terminal. This mitigation bank is proposed, but has not been reviewed or approved by the Commission. Additionally, Tesoro has provided \$225,000.00 to improve SMHM habitat at McNabney Marsh, located southwest of the project site and east of Interstate 680, in the City of Martinez, Contra Costa County (outside the Commission's jurisdiction). Finally, to compensate for construction impacts and on-going impacts from

annual vegetation clearance on Ridgway rail and SMHM, Tesoro has provided \$260,000.00 to restore a minimum of four acres of Ridgway clapper rail habitat at the San Pablo Bay National Wildlife Refuge, the precise areas and improvements not yet defined.

## II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

### A. Plan Review and Approval

1. **Construction in Accord with Plans.** The project authorized herein shall generally conform with the plans entitled "Avon Wharf Approach Trestle and Pipeway Repairs," revised through April 15, 2014 and prepared by Ben C. Gerwick, Inc., and by Anvil, and all accompanying and subsequent correspondence and exhibits.
2. **Conformity with Final Approved Plans.** Prior to commencement of work authorized herein, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work covered by the authorization will be performed in accordance with the approved design criteria and in substantial conformance with the approved plans. All improvements constructed pursuant to this permit shall conform to the final plans. No changes shall be made thereafter to any final plans without first obtaining written approval of the change(s) by or on behalf of the Commission.
3. **Discrepancies Between Approved Plans and Special Conditions.** In case of any discrepancy between final approved plans and special conditions of this authorization, the special condition shall prevail. The permittee is responsible for assuring that all plans accurately and fully reflect the special conditions of this authorization.

- B. **Fill Removal and Disposal.** All existing and temporary pilings shall be either fully removed or cut to minus three (3) feet below the mud-line. Demolition and construction debris shall be disposed at an authorized site located outside the Commission's jurisdiction.

- C. **Valid Title/Lease.** Prior to the expiration of the California State Lands Commission lease for the project site issued on January 1, 2015 and expiring on December 31, 2044, the permittee shall make good faith efforts to enter into a new or extended lease for the underlying property and provide evidence of the new or extended lease to the Commission. In the event that a new or extended lease is not obtained by the permittee and/or is not provided to the Commission by December 31, 2044, the permittee shall be responsible for and obtain any necessary Commission authorization for the removal of facilities authorized herein within two years of the termination of the State Lands lease.

- D. **Construction Measures to Protect Special-Listed Fish Species.** To minimize disturbance to special-status species, specifically the threatened southern Distinct Population Segment DPS North American green sturgeon, the permittee shall conduct construction activities authorized herein in compliance with restrictions identified in the National

Oceanic and Atmospheric Administration Fisheries (NMFS) Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation Management Act Essential Fish Habitat Consultation prepared for this project and dated April 13, 2015, including: (1) the use of a vibratory hammer to install piles and, if impact drivers are needed, the restriction of their use to the period between August 1 to November 30; (2) the use of bubble curtains to attenuate underwater sound levels; and (3) the implementation of a hydro-acoustic monitoring program during construction to assess pile driving effects on green sturgeon, as described in *Tesoro Avon Motems Compliance Project Underwater Acoustic Monitoring Plan*, dated November 21, 2014.

- E. **Construction Measures to Protect Other Special-Listed Wildlife Species.** To minimize disturbance primarily to the federally-endangered Ridgway rail and salt marsh harvest mouse, the permittee shall conduct activities authorized herein in compliance with restrictions identified in the U.S. Fish and Wildlife Service's (USFWS) Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion prepared for the project authorized herein dated May 11, 2015, including, the implementation of: (1) a revegetation plan, following completion of project construction, to restore impacted tidal/brackish marsh (not including areas affected by regular vegetation clearance), including a five-year monitoring program with specific success criteria; (2) precautionary steps to protect SMHM at the project site (e.g., employing a site biologist while work is underway, training personnel working in marshlands on the biology and sensitivity of the SMHM and Ridgway rail, installing temporary fencing to keep the SMHM and rail from work areas and inspecting the fence daily to ensure that it is intact and has not trapped SMHM, restricting work to dry periods and certain times of day, (i.e. within two hours before or after extreme high tides, etc.); (3) surveys for Ridgway rail and, if the rail is detected, restricting work during periods when the species is not expected to be affected or present; (4) not working within or adjacent to tidal marsh areas during the Ridgway rail's breeding season (February 1 through August 31) unless surveys document that the rail is not present in the project area or unless 700-foot buffer zones have been established around identified calling centers; and (5) site-specific measures to reduce perch areas for predators of SMHM and Ridgway rail by removing trees and using a specific type of pile cap on the east side of the authorized pipeway .
- F. **Water Quality Certification.** The permittee shall conduct work and activities authorized herein in compliance with the requirements of the water quality certification issued by the California Regional Water Quality Control Board, San Francisco Bay Region on May 13, 2015, including: (1) conduct bathymetric surveys following demolition to determine if in-water debris remains and, if so, remove resulting debris from the Bay; (2) limit demolition activities to daylight hours; and (3) design and implement a stormwater treatment system for an off-site location with an approximately 37,500-square-foot (0.86-acre) impervious surface area to offset runoff from the approachway authorized herein and, if within the Commission's jurisdiction, seek an amendment to this permit or a new authorization to obtain Commission review and authorization prior to implementation.

- G. **Mitigation.** To offset project impacts to the federally-endangered Ridgway rail and salt marsh harvest mouse at an approximately 1.5-acre area of tidal/brackish marsh suitable for SMHM and an approximately 3.3-acre tidal/brackish marsh area suitable for SMHM and rail, within 90 days of the subject permit issuance, the permittee shall provide to the Commission evidence that funds have been provided to an appropriate entity for: (1) the purchase of 12.56 acres of salt marsh harvest mouse habitat at the (proposed) Cordelia Slough Preserve; (2) the improvement of SMHM habitat at McNabney Marsh located in the City of Martinez outside the Commission's jurisdiction—a total of \$225,000.00 to the Dorothy M. Sakazaki Environmental Endowment Fund; and (3) the restoration of a minimum of four acres of Ridgway rail habitat within the San Pablo Bay National Wildlife Refuge—a total of \$260,000.00 in a Commission authorized restoration program.

By June 1, 2016—one year prior to the scheduled completion date of the marine terminal improvements authorized herein—the permittee shall provide a written report to the Commission on the status and description of the three above-referenced mitigation projects and written verification that implementation of the projects shall be initiated by or before June 1, 2017. If, by June 1, 2017, any of these mitigation options have not been initiated, the permittee shall seek an amendment to this permit no later than July 1, 2017 for the Commission's consideration and authorization of comparable (to the mitigation required herein) mitigation alternatives. The permittee shall be responsible to assure that any alternative mitigation is appropriately designed, funded, implemented, and monitored to ensure habitat restoration and/or enhancement success.

- H. **Seismic Instrumentation.** By completion of the project authorized herein, June 1, 2017, the permittee shall install seismic instrumentation equipment at the project authorized herein consistent with the prior review and advice of the Commission's Engineering Criteria Review Board ("ECRB").
- I. **Sea Level Rise and Flooding Measures.** To reduce future water level risks to the pipeway authorized herein and associated pipelines, the permittee shall install cross beams designed to meet water levels through approximately 2030. The pipeway (and associated pipelines) shall be designed to be raised in the future, and, in constructing the pipeway, the permittee shall use corrosion resistant materials, including epoxy coating and "hot dipped galvanized" coating. Further, within four years of completion of construction and use of the pipeway, but no later than June 1, 2021— and, subsequently every four years by June 1 (e.g., June 1, 2025, June 1, 2029, etc.)—in coordination with audits of the California State Lands Commission and MOTEMS, the permittee shall monitor water levels relative to the pipeway and pipelines, including extreme tide, flood, and storm events, and, based on data collected, estimate future water levels at the pipeway and approximate date(s) by which pipelines are expected to be vulnerable to inundation. Within four months of completing the required monitoring (e.g. by October 1), the data and any proposed recommendations on pipeway and pipeline status and condition shall be included in a written report to be reviewed by or on behalf of the Commission. At such time that the report indicates potential pipeline vulnerability to inundation within two years, the permittee shall initiate and undertake a

process to resolve such conditions, including: (a) raising the cross beams supporting the pipelines sufficient to assure that the pipelines will not be inundated; (b) designing a modified or new pipeway and pipeline system to be resilient and adaptable to flooding conditions; (c) seeking the advice of the Commission's ECRB if the proposed project would result in design weight changes by more than ten percent of present requirements; (d) coordinating with the Commission staff to, among other things, obtain Commission authorization for the proposed project; and (e) completing construction of the resulting authorized facility no later than 24 months from the date of initiating this process.

- J. **Seismic Criteria and Engineering Review.** By March 1, 2016, the permittee shall submit a displacement analysis of the pipeway authorized herein to the Commission staff, which will distribute the analysis to the Commission's Engineering Criteria Review Board ("ECRB"). Within 45 days of staff receipt of the information, the permittee shall present the displacement analysis at an ECRB meeting after which the ECRB shall advise the Commission staff as to whether the analysis supports the operation of the as-built pipeway in accord with sound safety standards. In the event that the information considered indicates that operation of the pipeway system would be consistent with the Commission's law and policies, based upon the advice of the ECRB, the Executive Director on behalf of the Commission will provide the permittee with written notification that pipeway and pipeline operation is authorized to proceed. In the event that the ECRB does not provide advice to support the sound operation of the pipeway, the Commission's Executive Director will inform the permittee that the pipeway system operation is not allowed until the matter is resolved. In the event that the permittee wishes to dispute the ECRB's advice, within 30 days of the ECRB meeting, the permittee may appeal the matter, including specific reasons for the appeal, to the Commission's Executive Director and, subsequently, the permittee, the Executive Director, and the Commission's Chairperson shall consult and resolve the dispute. If the dispute remains unresolved, the Commission's Executive Director and Chair shall refer the permittee's dispute to the full Commission for resolution.

### III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

- A. **Use.** The project is located at a *San Francisco Bay Plan*-designated Water-Related Industry site. The Bay Plan Map 2 includes Policy 12, which states that "[p]ipelines and piers may be built over marshes." A marine terminal is a water-related industry and the project will assure the safety and improve the efficiency of this water-related use.
- B. **Bay Fill.** The Commission may allow fill when it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which provide, in part, that: (a) fill "should be limited to water-oriented uses;" (b) fill in the Bay should be approved only when "no

alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill”; (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment...”; (e) “fill [should] be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters”; and (f) “fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”

In the Bay, the project will primarily involve the demolition and removal of existing facilities, including Berth 5, an approachway, and piles supporting various structures (e.g. a pipeway), and the construction of a berth and an approachway, improvements at Berth 1, and a pipeway trestle supporting existing pipelines.

1. **Water-Oriented Use and Upland Alternative.** Section 66605 of the McAteer-Petris Act identifies “water-related industry” as a water-oriented use. The Bay Plan findings on water-related industries state, in part, that water-related industries “require a waterfront location on navigable, deep water to receive raw materials and distribute finished products by ship, thereby gaining a significant transportation cost advantage.”

The project site is located adjacent to the Suisun Bay, east of Carquinez Strait, within an area serving deep-water marine vessels. Water depths at the berth are approximately 45 to 50 feet below Mean Lower Low Water (MLLW). The site transfers oil products to and from ships moored at the Avon Wharf. Oil products are transferred through several pipelines connected to the upland facility, which is located outside the Commission’s jurisdiction.

According to the Final Environmental Impact Report (“FEIR”) on the project, annual ship and barge traffic currently averages 124 vessels per year. Current throughput ranges from 5.1 to 12.8 million barrels per year. Future estimates are 70 to 120 vessels per year, with annual throughput estimates ranging from 10 to 15 million barrels per year. The maximum capacity at the facility is 45 million barrels per year. The timber and creosote-treated structures scheduled for demolition, including Berth 5 and the approachway, have been in place for approximately 90 years and require complete removal. The creosote pilings also have the potential to contaminate the Bay. According to the FEIR, the project will “not provide any increase or expansion” of existing operations, but the site will continue to fulfill a water-related industrial use as a marine oil terminal.

The facilities will continue to take advantage of their proximity to the Bay—relocation to an upland site is not feasible for a marine-based terminal. According to the application, the Berth 1A main platform will house facilities whose specific over-water location is necessary to achieve compliance with the MOTEMS program. For example, the two-story control building at the main platform is designed to improve



“visibility of the terminal” and, thereby, ensure safe operations. Other facilities at the main platform include: a marine vapor recovery system for capturing hydrocarbon vapors associated with oil product loadings to comply with Bay Area Air Quality Management District regulations; a fire and smoke detection and response facility; and MOTEMS-required instrumentation and control infrastructure. Upon completion of the project, loading operations will cease at the existing Berth 1 and shift to the Berth 1A. The project also includes new docking facilities for oil spill response boats and lifts for emergency egress boats. According to the application, the mooring dolphin at existing Berth 1A will “allow vessels to be secured with a more secure, symmetrical mooring line arrangement.”

A pile-supported, 12-foot-wide, concrete approachway and pipeway support system will be directly connected to the wharf complex and built over tidal marsh. These structures will involve the installation of 352 steel piles, and the removal of 795 existing creosote timber piles. The improvements at the pipeway will support eleven existing pipelines measuring 2- to 20-inches-diameter and carrying recovered oil, water, vapor recovery, gasoline, and a 2-inch line carrying firefighting foam. A parking area for vehicles will also be located on a 4,000-square-foot section of the approachway.

2. **Minimum Fill.** Because the facility authorized herein will be smaller than the existing terminal, the project will result in an approximately 11,939-square-foot (0.28-acre) net increase in open surface area of the Bay, and an approximately 237 cubic yards net increase in Bay volume (fewer support pilings). Additional activities, namely temporary construction pilings/facilities and the relocation of a navigational aid, will not result in any permanent change in the Bay’s volume. The osprey nesting platform will involve the placement of an approximately 16-square-foot nesting platform elevated approximately thirty feet above a tidal brackish marsh area. Special Condition II.B contained herein requires the permittee to dispose all materials associated with demolition outside of the Commission’s jurisdiction and, thus, outside the Bay.
3. **Valid Title.** The California State Lands Commission renewed Tesoro’s lease January 1, 2015, to continue its marine terminal operations at the project site. The lease-term is 30 years, expiring on December 31, 2044, at which time, if the lease is not further renewed, the lease requires Tesoro to “remove all or any portion of the improvements at its sole expense and risk, provided that all necessary government permits are obtained.” Special Condition II.C contained herein requires the permittee to obtain a new or extended lease for the property and provide evidence of such a lease to the Commission and, if not secured, obtain necessary Commission authorization for the removal or modification of the authorized facilities.

*The Commission finds that the project is consistent with the Bay Plan priority use designation for the site, meets the definition of a water-oriented use, has no upland alternative, and constitutes the minimum necessary fill and, thus, is consistent with its law and policies.*

4. **Bay Resources.** In addition to the provisions of Section 66605 of the McAteer-Petris Act regarding fill effects on resources, the Bay Plan contains the following relevant policies:

Fish, Other Aquatic Organisms, and Wildlife Policy 2, states, in part: "...habitats that are needed to conserve, increase, or prevent the extinction of any native species, species threatened or endangered...should be protected...." Policy 4 states, in part: "[t]he Commission should: (a) consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened... species....; [and] (c) give appropriate consideration to the recommendations of the [resource agencies] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat."

Tidal Marshes and Tidal Flats Policy 1 states, in part: "...[f]illing, diking, and dredging projects that would substantially harm tidal marshes...should be allowed only for purposes that provide substantial public benefits and only if there is no feasible alternative." Policy 2 states: "[a]ny proposed fill, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects." Further, the Bay Plan Subtidal Areas Policy 1 states, in part, projects in subtidal areas "should be designed to minimize and, if feasible, avoid any harmful effects" on Bay resources.

The Bay Plan Water Quality Policy 2 states: "[w]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the Regional Water Quality Control Board's Basin Plan. The policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Water Quality Control Board, should be the basis for carrying out the Commission's water quality responsibilities." Policy 3 states, in part: "[n]ew projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay...." The Bay Plan Water-Related Industry Policy 1 also states, in part, that sites should be planned to minimize "water pollution...through strict compliance with all relevant laws, policies and standards."

The Bay Plan Mitigation Policy 1 states, in part, that projects should avoid adverse environmental impacts and, if unavoidable, impacts minimized to the greatest extent practicable and, moreover, require measures to compensate for such impacts. Policy 2 states, in part: "...compensatory mitigation projects should be sited and designed...as close to the impact site as practicable...." The Bay Plan Mitigation Policy 4 states, in part: "[t]he amount and type of compensatory mitigation should be determined...based on a clearly identified rationale that includes an analysis of: the probability of success of the mitigation project; the expected time delay between the impact and the functioning of the mitigation site; and the type and quality of the ecological functions of the proposed mitigation site as compared to

the impacted site.” Policy 6 states, in part, mitigation should occur “prior to, or concurrently with those parts of the project causing adverse impacts.” Policy 7 states, in part, that the program should include goals, performance standards to evaluate success, and plans for site monitoring, adaptation, maintenance, and management. Additionally, Bay Plan Water-Related Industry Policy 1 states, in part, that projects should be “consistent with the Commission's policy concerning mitigation...provid[ing] for all unavoidable adverse environmental impacts.”

According to the application, the “project area is located in what was historically level brackish marsh,” where some upland area has been filled to serve oil refinery purposes. The northern-most section of the project site is open to tidal action and covered by “relatively undisturbed brackish marsh[es]” and “unvegetated Suisun Bay mudflats and subtidal areas.” The tidelands south of open water is tidal marsh, but in the immediate vicinity of the existing approachway and pipeway, the marsh is degraded due to State Fire Marshall required, regular vegetation clearance to allow pipeline inspections. Within the project area, tidal-brackish marsh provides suitable habitat for the federally-endangered salt marsh harvest mouse (“SMHM”) and the federally-endangered Ridgway rail (“rail”). Open water and low elevation marshes at the site provide habitat suitable for the federally-threatened southern distinct population segment (“DPS”) North American green sturgeon.

In the Bay, the project primarily involves the removal of Berth 5, an approachway, and associated pilings, and the construction of Berth 1A and a new approachway, upgrades to a trestle supporting existing pipelines, and minor improvements at Berth 1A. The facilities will be supported on pilings over the open water and tidal brackish marsh areas. The project will result in an approximately 11,939-square-foot (0.28-acre) net increase in open surface area of the Bay, and an approximately 237 cubic yards net increase in Bay volume associated with fewer pilings needed for the structures authorized herein.

- a. **Fish.** On April 13, 2015, the National Marine Fisheries Service (“NMFS”) issued a biological opinion (“B.O.”) for the project. The opinion states that, the project would occur in an area populated by the threatened southern DPS North American green sturgeon and, thus, could result in impacts to green sturgeon from pile driving and elevated sound levels, and water quality degradation from turbidity. However, the B.O. concluded that the project will not likely jeopardize the continued existence of the species or result in adverse effects of associated critical habitat due to Tesoro’s proposed impact minimization construction measures, including: the use of a vibratory hammer to install piles and, if impact drivers are needed, the restriction of their use from August 1 to November 30, and the use of bubble curtains to attenuate underwater sound levels. Additionally, NMFS recommended—and Tesoro proposes—to implement the hydro-acoustic monitoring program during construction to assess pile driving effects on green sturgeon, as described in *Tesoro Avon Motems Compliance Project Underwater Acoustic Monitoring Plan*, dated November 21, 2014. Regarding Essential Fish Habitat (“EFH”) in the project area, NMFS determined that the project could

adversely affect EFH for various federally-managed species included the Pacific Salmon, coastal Pelagic, and Pacific Groundfish Fishery Management Plans, but such effects will be temporary and offset, in part, by an overall project decrease in over-water fill. The B.O. concludes by stating “[w]hen completed, the project is expected to benefit aquatic habitat through...” the resulting decrease in over-water (i.e., pile-supported) fill and the removal of creosote-treated timber pilings. Special Condition II.D contained herein requires the permittee to comply with the restrictions identified in the above-referenced NMFS biological opinion.

- b. **Wildlife.** On May 11, 2015, the USFWS issued a B.O. focusing primarily on the project’s “likely” effects on the federally-endangered SMHM and Ridgway rail, and the threatened Delta smelt and designated critical habitat. The B.O. states that Tesoro’s construction measures to reduce elevated sound effects of pile driving and minimize potential water quality impacts will address potential long-term effects on smelt. Regarding effects on the SMHM and the rail, the USFWS found that the project will impact marsh habitat suitable for these special-listed species, specifically: permanent habitat loss of an approximately 0.02-acre area of tidal/brackish marsh suitable for SMHM habitat; temporary construction impacts (from proposed approachway and pipeway construction) affecting a total of approximately 1.5-acre area of tidal/brackish marsh suitable for SMHM habitat; and on-going impacts affecting approximately 3.3-acre tidal/brackish marsh area suitable for SMHM and rail from regular vegetation clearance along the pipeway alignment.
- c. **Mitigation.** The USFWS recommended that impacts to SMHM habitat be mitigated through funding the purchase of a total of 21.12 acres of similar habitat (11.13 acres to mitigate for construction-related impacts and 9.99 acres to mitigate for annual vegetation clearing impacts). In response, Tesoro funded the purchase of 12.56 acres of salt marsh harvest mouse habitat at the (proposed) Cordelia Slough Preserve (“Preserve”), located at the former private Green Lodge Duck Club, in the Commission’s Primary Management Area of the Suisun Marsh, approximately 7.2 miles north of Tesoro’s marine terminal. The Preserve has been purchased by a private company (Wildlands Inc.,) and, in the future, is proposed to affect an approximately 195-acre area. It should be noted that the Preserve has not yet been reviewed by Commission staff nor has the mitigation area or mitigation banking agreement been authorized through a Commission action.

Tesoro also provided \$225,000.00 to the Dorothy M. Sakazaki Environmental Endowment Fund to improve SMHM habitat at McNabney Marsh, located southwest of the project site and east of Interstate 680, in the City of Martinez, Contra Costa County, and about a half mile south of the Commission’s jurisdiction.

To compensate for 1.1 acres of short-term construction impacts and 0.9 acres of impacts associated with annual vegetation clearance on Ridgway rail and SMHM, Tesoro has provided \$260,000.00 to restore a minimum of four acres of Ridgway rail habitat at the San Pablo Bay National Wildlife Refuge. The exact location and improvements at the four-acre area within the Refuge have not yet been finalized or authorized. Also, Tesoro will implement site-specific measures to reduce perch areas for predators of SMHM and the rail through the removal of trees and the use of a certain type of pile cap at the east site of the pipeway.

Tesoro will also incorporate other USFWS-recommended measures to avoid and minimize project impacts, including: the preparation and, following the completion of project construction, implementation of a revegetation plan to restore tidal/brackish marsh impacted by the project (excluding areas to be affected by annual vegetation clearance), which includes a five-year monitoring program and success criteria; the implementation of precautionary steps to protect SMHM at the project site (e.g., employing a site biologist while work is underway, training personnel working in marshlands on the biology and sensitivity of the SMHM and Ridgway rail, installing fencing to keep the SMHM and rail from work areas, restricting work to dry periods, certain times of day, avoiding work at extreme high tides, etc.), and conducting surveys for Ridgway rail and, if detected, restricting work during periods when the species is not expected to be affected or present.

In light of the mitigation and construction minimization measures, the USFWS concluded its consultation stating that, the project “is not expected to jeopardize the continued existence” of Delta smelt, Ridgway rail or SMHM.

Special Condition II.E contained herein requires the permittee to comply with the construction minimization measures identified in the USFWS biological opinion. Further, Special II.G contained herein requires the permittee to comply with the above-referenced mitigation measures and, further, take appropriate action to ensure that these or, if necessary, alternative mitigation options are implemented.

- d. **Water Quality.** On May 13, 2015, the San Francisco Bay Regional Water Quality Control Board (“RWQCB”) issued a water quality certification for the project. The certification requires Tesoro to incorporate a majority of the minimization measures contained in the above-referenced biological opinions. In addition, the certification requires Tesoro to: remove all pilings to three feet below the mud-line; following demolition, to conduct bathymetric surveys to determine if in-water debris remains and, if so, remove resulting debris from the Bay; and limit demolition activities to daylight hours. Further, “to ensure that there will be no violations of water quality standards,” the certification requires Tesoro to provide treatment for all stormwater runoff from the proposed approachway and Berth 1A. According to the certification, stormwater runoff from Berth 1A would be collected and conveyed to the upland refinery for treatment. Tesoro

has not, however, designed measures to address runoff from the proposed approachway and, consequently, as an alternative, the certification requires Tesoro to design and implement a stormwater treatment system at a yet-to-be-determined off-site location with an equivalent impervious surface area (37,500 square feet (0.86 acres)).

Special Condition II.B requires the permittee to remove pilings to three feet below the mud-line while Special Condition II.F requires the permittee to comply with the RWQCB's certification for the project authorized herein.

*The Commission finds that the project, as conditioned, is consistent with the McAteer-Petris Act and Bay Plan policies to protect fish, wildlife, and water quality in part due to Tesoro's compliance with federal and state recommendations to minimize and mitigate project impacts and, thus, ensure protection of Bay resources.*

5. **Sound Safety Standards.** In addition to the provisions of Section 66605 of the McAteer-Petris Act regarding fill safety standards, the Bay Plan Safety of Fills Policy 1 states, in part: "the Engineering Criteria Review Board [ECRB] [is] empowered to: (a) establish and revise safety criteria for Bay fills and structures thereon; (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions; (c) prescribe an inspection system to assure placement and maintenance of fill according to approved designs; (d) with regard to inspections of marine petroleum terminals, make recommendations to the California State Lands Commission and the U.S. Coast Guard, which are responsible for regulating and inspecting these facilities; (e) coordinate with the California State Lands Commission on projects relating to marine petroleum terminal fills and structures to ensure compliance with other Bay Plan policies and the California State Lands Commission's rules, regulations, guidelines and policies; and (f) gather, and make available performance data developed from specific projects."

In addition, the Bay Plan Safety of Fills finding h. states, in part: "Marine petroleum terminals can pose a risk to public health and safety and the environment and increase the risk of oil spills if allowed to deteriorate or become structurally unsound. The California State Lands Commission and the U.S. Coast Guard regularly monitor oil transfers at marine petroleum terminals. The California State Lands Commission also conducts inspections and reviews engineering analysis and design changes for rehabilitation and/or new construction. This oversight includes, but is not limited to, oil transfer equipment, all major structural components, moorings, mechanical and electrical systems, and fire detection and suppression systems, pursuant to California State Lands Commission and U.S. Coast Guard rules, regulations, guide-lines and policies."

The Safety of Fills Policy 2 states: “Even if the Bay Plan indicates that a fill may be permissible, no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the Engineering Criteria Review Board.” Further, Policy 3 states, in part: “[t]o provide vitally needed information on the effects of earthquakes on all kinds of soils, installation of strong-motion seismographs should be required on all future major land fills.” Lastly Policy 4 states, in part: “[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project.... New projects on fill or near the shoreline should either be set back from the edge of the shore so that the project will not be subject to dynamic wave energy, be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project, be specifically designed to tolerate periodic flooding, or employ other effective means of addressing the impacts of future sea level rise and storm activity.”

Further, the Bay Plan Climate Change Policy 2 states: “When planning shoreline areas or designing larger shoreline projects, a risk assessment should be prepared by a qualified engineer and should be based on the estimated 100-year flood elevation that takes into account the best estimates of future sea level rise and current flood protection and planned flood protection that will be funded and constructed when needed to provide protection for the proposed project or shoreline area. A range of sea level rise projections for mid-century and end of century based on the best scientific data available should be used in the risk assessment. Inundation maps used for the risk assessment should be prepared under the direction of a qualified engineer. The risk assessment should identify all types of potential flooding, degrees of uncertainty, consequences of defense failure, and risks to existing habitat from proposed flood protection devices.”

On June 10, 2014, the ECRB reviewed the project, and focused primarily on whether the design would meet or exceed MOTEMS requirements, protect against future sea level rise and storm activity, and be seismically-sound. Berth 1A involves the construction of a concrete main platform supported by 130-foot-long steel pilings. The approachway involves the installation of a stationary steel beam and piling system on top of which will be placed a 12-foot-wide concrete roadway. Lastly, the adjacent pipeway involves the replacement of timber pilings with a steel support system comprised of pilings and cross beams. The cross beams of the pipeway are designed to be adjustable and will be raised when rising water levels threaten inundation of the pipelines. The approachway and pipeway will share the same set of center pilings.

Through its review, the ECRB requested that Tesoro provide the following information so that the ECRB could better assess the design and engineering criteria and design, including: (1) the basis for the measures to minimize oil spill risk at the terminal result from events, such as earthquakes, to ensure their adequacy—with a particular focus on shut-off valves with a 30-minute lag time between spill discovery

and actual shut-off; (2) a plan for installation of seismic instrumentation equipment; (3) an explanation about the response of facilities to sea level rise and storm activity; and (4) a fuller assessment of the pipeway's potential for movement and displacement in a seismic event, particularly since different engineering criteria were used to design the pipeway and the berth. Over the course of the year following the ECRB meeting, Tesoro responded as discussed below.

- a. **Oil Spill Response Measures.** Tesoro provided additional information about measures to minimize oil spill risks, including details on the spill containment boom reel, fire alarm and response facilities, an emergency response vessel dock to access and deploy spill response supplies, an emergency back-up generator to allow for shut-down of operations and continued use of emergency equipment, employee training programs, and contracts with Bay Area spill response services. Regarding the pipeline shut-off valves, Tesoro explained that the system was selected to provide the most rapid response technically achievable, and that the 30-minute "lag time" was based on conservative estimates historically used by Tesoro.

Further, Tesoro explained that the equipment—and the terminal facility as a whole—is not only required to comply with MOTEMS, but also with the U.S. Coast Guard Oil Response Plans, the U.S. Environmental Protection Agency Facility Response Plans, the State Office of Oil Spill Prevention and Response, and Contra Costa County's Industrial Safety Ordinance. Additionally, the upgraded facility will be inspected and audited periodically in accordance with the 2013 California Building Code (MOTEMS) and by the State Lands Commission and the U.S. Coast Guard (USCG). Although, the ECRB expressed concern about the valve shut-off system and the mentioned 30-minute lag-time between potential spill and actual shut-down, the Bay Plan findings and policies recognize the authority and expertise of the State Lands Commission and others overseeing the design and operation of such systems and, thus, ultimately the Commission staff recommended that the ECRB defer to the oversight of others on this matter.

- b. **Seismic Instrumentation.** Tesoro prepared a seismic instrumentation plan for the facility, which was endorsed by the ECRB and which will be installed at the project site, as required in Special Condition II.H contained herein.
- c. **Sea Level Rise.** According to Tesoro, the 100-year flood elevation at the project site is approximately 8.2 feet above Mean Lower Low Water ("MLLW") datum.<sup>1</sup> In terms of future sea level rise at the site, Tesoro used the following projections in the project design: 0.6-foot rise by 2030 and 24-inch rise by 2070, resulting in projected water levels of 8.8 feet MLLW for 2030 and 10.2 feet MLLW at 2070.

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<sup>1</sup> According to Tesoro, the Federal Emergency Management Act ("FEMA") Flood Insurance Rate Map (2009) shows the project site located in a zone where no Base Flood Elevation ("BFE") has been formally been estimated. Therefore, Tesoro conducted an analysis to determine the flood elevation.



Tesoro informed the ECRB that the Berth 1A and approachway have an estimated design life of 50 years or through 2070. The pipeway pilings are also designed with an estimated life of 50 years, through 2070. The pipeway cross beams are designed to be adjustable and, along the southern end of the pipeway alignment, will be initially installed at an elevation of 8.58 feet MLLW. As the pipeway extends north from the shoreline towards open water and the wharf, its height relative to water levels will increase, from 12.50 feet MLLW to 16.92 feet MLLW where it connects to Berth 1A. Tesoro anticipates that the pipeway at its lowest proposed elevation will remain above water through approximately 2030. Further, Tesoro will monitor water levels over time, as conditioned herein and discussed further in the Climate Change section, and raise the pipeway beams as water levels rise, to a maximum elevation of 16.92 feet MLLW.

- d. **Seismic Criteria.** At the ECRB meeting on June 10, 2014 and in follow-up correspondence, the ECRB requested additional information on the engineering criteria used to design the project, including the pipeway and the pipeline anchoring system. The ECRB also asked Tesoro to provide further information to understand the displacement analysis of the pipeway and associated pipelines to assess the full range of movement under varying seismic events. In the absence of such an analysis, the ECRB recommended that an independent third-party review of the pipeway be conducted.

Tesoro explained that the pipeway design includes features allowing flexibility so as to minimize breakage and/or damage in an earthquake. Further, Tesoro explained that it conducted a “simplified” displacement analysis for the project, which not only complies with MOTEMS code but accounts for maximum conflicting movement of the pipeway and lines. Further, Tesoro stated (email to Commission staff dated April 2, 2015) that “[u]nfortunately, an additional third party review of a project of this size and complexity cannot be completed in a timeframe that aligns with the 2015 August 1 to November 30 on-water work window.”

On a related note, in response to a State Lands Commission letter dated January 27, 2015, which included a request for a third-party review of the Berth 1A design criteria and design calculations, Tesoro stated (in a letter dated May 28, 2015) that it:

“has committed to make substantial upgrades to the Avon Wharf in order to bring the facility into compliance with MOTEMS. To that end, a team of highly competent, established engineering and design consultants that have extensive design experience using MOTEMS and other pertinent Codes have been retained to provide a robust design that meets all MOTEMS requirements. Quality assurance of designs has been completed as required by MOTEMS...as is standard practice for good engineering design. In addition, required reviews by the [State Lands Commission] Marine

Facilities Division and the [Commission's] Engineering Criteria Review Board have been conducted and Tesoro and its team of consultants have worked in earnest to provide responses to all technical inquiries from both entities. Given the level of scrutiny that has already been applied to the project, Tesoro believes the signed, stamped designs provided by its highly qualified team of consultants more than adequately addresses all MOTEMS / Code requirements."

The State Lands Commission (in a letter dated June 17, 2015) accepted Tesoro's response concerning its earlier request for third-party review.

According to the State Lands Commission staff, project proponents can conduct either a simple or "full non-linear time-history" analysis for marine terminal projects and, further, that a simplified analysis typically includes more conservative estimates than the "full non-linear time-history" analysis of pipeline deflection and stress. For this reason, the State Lands Commission concluded that the simple analysis was adequate to allow project construction to proceed. It should be noted, pursuant to MOTEMS, the State Lands Commission staff will conduct a complete review of Tesoro's simplified analysis for the project and also conduct an audit of the as-built facility before allowing the marine terminal to operate.

Following the mailing of the Application Summary on July 2, 2015, Tesoro provided additional information on the pipeway displacement analysis, which the ECRB reviewed and concluded that it was unable, at this time, to advise the Commission that the pipeway (and, by association, pipelines) would operate in accordance with sound safety standards. In an attempt to resolve the matter, the ECRB recommended to the Commission staff that "[c]onsidering that earthquake ground motions are expected to vary significantly along the length of the pipeline due to variations in thickness and seismic velocities of the soil layers at each [pipeline] anchor support," Tesoro should do the following: (1) develop site-specific earthquake ground-motion maximum displacement estimates for the locations of the anchor support systems; (2) use these site-specific ground-motion estimates to infer estimates of the maximum differential ground motion expected between the locations of the anchor supports; and (3) consider these differential ground motion displacements, based on a reasonable estimate of how they are transmitted concurrently over time into the various anchor support systems, in the evaluation of pipe stresses and the resultant design of the pipeline. Therefore, Special Condition II.L contained herein requires the permittee to provide the ECRB with additional information, such as noted above, within six months of permit issuance regarding the pipeway displacement analysis and,

thereby, facilitate the ECRB's analysis of the project and its provision of advice to the Commission as to whether the operation of the facility authorized herein would be in accord with sound safety standards.

*The Commission finds that the project, as conditioned, is consistent with its law and policies regarding the safety of construction and operation of fill in the Bay.*

- C. **Climate Change.** The Bay Plan Climate Change Policy 3 states: "To protect public safety and ecosystem services, within areas that a risk assessment determines are vulnerable to future shoreline flooding that threatens public safety, all projects—other than repairs of existing facilities, small projects that do not increase risks to public safety, interim projects and infill projects within existing urbanized areas—should be designed to be resilient to a mid-century sea level rise projection. If it is likely the project will remain in place longer than mid-century, an adaptive management plan should be developed to address the long-term impacts that will arise based on a risk assessment using the best available science-based projection for sea level rise at the end of the century." Further, Policy 7 states, in part: "[u]ntil a regional sea level rise adaptation strategy can be completed, the Commission should evaluate each project proposed in vulnerable areas on a case-by-case basis to determine the project's public benefits, resilience to flooding, and capacity to adapt to climate change impacts. The following specific types of projects have regional benefits, advance regional goals, and should be encouraged, if their regional benefits and their advancement of regional goals outweigh the risk from flooding...public utility or other critical infrastructure that is necessary for existing development....The following specific types of projects should be encouraged if they do not negatively impact the Bay and do not increase risks to public safety...repairs of an existing facility...[or] a use that is interim in nature and either can be easily removed or relocated to higher ground...."

To reduce future water level risks to the pipeway and associated pipelines, which will not be replaced, Tesoro will install cross beams that, for an "interim" period, meet water levels through approximately 2030 and are designed to be raised along with the pipeway as water levels warrant such an action. To that end, Tesoro will, in coordination with the State Lands Commission MOTEMS audits, monitor water levels along the pipeway and calculate water levels in relation to the pipelines every four years following project construction. At such time when water levels are approaching a point that would jeopardize pipeline integrity, Tesoro will initiate a 24-month design, permitting, and construction process at the end of which the cross beams will be elevated or replaced in their entirety. In addition, Tesoro will construct the pipeway using corrosion resistant materials, including epoxy coating and "hot dipped galvanized" beams. Tesoro recognizes that if the implementation of future measures to address higher water levels were to result in current design weight changes, i.e., "more than ten percent of present requirements," it will seek additional assessment on structural adequacy, i.e., through additional review by the Commission's ECRB. Special Condition II.K contained herein

requires Tesoro to apply the above-described construction strategies and undertake a program for monitoring future water levels at the site and implementing corrective actions to ensure that the pipeway and lines remain resilient to flooding over time.

*The Commission finds that the project authorized herein, as conditioned, will be resilient to sea level rise and flooding and, thus, is consistent with its relevant law and policies.*

- D. Navigational Safety and Oil Spill Prevention.** The Bay Plan Navigational Safety and Oil Spill Prevention Policy 2 states, “The Commission should ensure that marine facility projects are in compliance with oil spill contingency plan requirements of the Office of Spill Prevention and Response, the U.S. Coast Guard [“USCG”] and other appropriate organizations.”

Pursuant to the California Environmental Quality Act (CEQA), the reissuance of the lease for the subject property was evaluated in an Environmental Impact Report with the State Lands serving as the lead agency. According to the EIR for the project, marine terminals and vessels calling at the terminals are required to have oil spill response plans and a prescribed level of initial response capability. The USCG and California Department of Fish and Wildlife’s (CDFW) Office of Spill Prevention and Response (OSPR) created the Oil Spill Response Organization (OSRO) classification program so that facility and tank vessel operator can contract with and list an OSRO in their response plans. Tesoro contracts with Marine Spill Response Corporation (MSRC) to serve as the primary OSRO in its Oil Spill Response Plan. In addition, Tesoro maintains its own on-site spill response capabilities. Tesoro’s Oil Spill Response Plan has been certified by the USCG and OSPR. Tesoro currently keeps its larger response boats at the Martinez Marina. As part of the MOTEMS renovation, these response boats would be relocated to the marine terminal thus affording a more rapid spill response.

An existing USCG aid to navigation range marker, which is currently located east of the proposed Berth 1A location, will be relocated within close proximity to the existing location “to ensure that it will not be damaged by marine construction activities.” The relocation will result in no change of existing solid fill associated with the marker. This activity was approved by the USCG in 2012.

*The Commission finds that the project, as conditioned, will ensure safe navigation conditions at the project site.*

**E. Review Boards**

1. **Engineering Criteria Review Board (ECRB).** The Commission’s ECRB reviewed the proposed project as discussed above in Section III.4 of the issues section.
2. **Design Review Board (DRB).** The Commission’s DRB did not review the project as public access improvements were not proposed.

- F. Compliance with the California Environmental Act/CEQA Findings.** The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document for such projects. The project is located on a

California State Lands Commission lease consisting of an approximately 11-acre parcel of sovereign State land. Tesoro applied to State Lands for a new 30-year lease to conduct the proposed MOTEMS-related activities and to continue operation of the oil terminal. State Lands prepared an environmental impact report on the new lease, which included a full evaluation of impacts associated with the work. Upon certification of the final EIR in March 2015, State Lands found that all significant project impacts will be mitigated to less than significant levels.

- G. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.
- H. **Conclusion.** For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the *San Francisco Bay Plan*, the McAteer-Petris Act, the California Environmental Quality Act, and the Commission's amended management program for the San Francisco Bay segment of the California coastal zone.

#### IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Certification of Contractor Review.** Prior to commencing construction authorized herein, the general contractor or contractors in charge of such work within the Commission's jurisdiction shall submit written certification that s/he has reviewed and understands the requirements of the permit and any final plans subject to BCDC approval.
- C. **Notice of Commencement.** The attached Notice of Commencement shall be submitted to the Commission within 30 days of commencing any portion of the project authorized herein.
- D. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- E. **Permit Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.

- F. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.
- G. **Built Project Consistent with Permit Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- H. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- I. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "bay" jurisdiction.
- J. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- K. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or its assignees if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or their assignees if the permit has been assigned.
- L. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or its assignees if the permit has been

assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.

- M. **Permission to Conduct Site Visit.** The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.
- N. **Best Management Practices**
1. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, its assigns, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
  2. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at its expense.
- O. **Permit Assignment.** Prior to entering into any agreement to transfer any interest in any property subject to this permit, the permittee or any assignees of this permit or any part of it, shall provide the third party with a copy of this permit and shall call their attention to any provisions regarding public access or need to obtain further Commission approval related to any activities authorized herein. No more than ten days after transferring any interest in any property subject to this permit to another party, the transferors shall: (a) notify the Commission of the nature of the transfer, the name, address, and telephone number of the transferee, and the effective date of the transfer; and (b) shall submit an assignment of this permit for the area transferred that has been executed by the transferor and the transferee and that indicates that the transferor has transferred the permit as it applies to the property that was transferred and that the transferee has read, understood, and has agreed to be bound by the terms and conditions of this permit.
- P. **Abandonment.** If, at any time, the Commission determines that the improvements in the Bay authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, its assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.
- Q. **Certificate of Use.** Prior to use of any of the improvements authorized herein, the permittee shall submit the Notice of Completion and Compliance required herein and request in writing an inspection of the project site by the Commission staff. Within 30 days of receipt of the written request for an inspection, the Commission staff will:

(1) review all permit conditions; (2) inspect the project site; and (3) provide the permittee with written notification of all outstanding permit compliance issues, if any. The permittee shall not occupy or make use of any improvements authorized herein until the Commission staff has confirmed that the identified permittee compliance issues have been satisfactorily resolved and has provided the permittee with a Certificate of Use. Failure by the Commission staff to perform such review and inspection and notify the permittee of any deficiencies of the project within this 30-day period shall not deem the project to be in compliance with the permit, but the permittee may use the improvements authorized herein.

- R. **General Maintenance.** All maintenance of facilities authorized herein shall constitute in-kind work only and shall not result in an expansion of the Bay volume or footprint of the project or fill authorized herein.
- S. **Recording.** The permittee shall record this permit on all parcels affected by this permit with Contra Costa County within 30 days after execution of the permit issued pursuant to this authorization and shall, within 30 days after recordation, provide the original recordation to the Commission.
- T. **Hold Harmless and Indemnify.** The permittee shall hold harmless and indemnify the Commission, all Commission members, Commission employees, and agents of the Commission from any and all claims, demands, losses, lawsuits, and judgments accruing or resulting to any person, firm, corporation, governmental entity, or other entity who alleges injuries or damages caused by work performed in accordance with the terms and conditions of this permit. This condition shall also apply to any damage caused by flooding of or damage to property that is alleged to be caused as a result of some action or lack of action by the Commission growing out of the processing of and issuance of this permit.